

this chapter, or (b) it is required to do so by local law.

[49 FR 21492, May 21, 1984]

EFFECTIVE DATE NOTE: At 65 FR 16726, Mar. 29, 2000, § 960.210 was removed, effective Apr. 28, 2000.

Subpart C—Rent and Reexamination

SOURCE: 65 FR 16726, Mar. 29, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 65 FR 16726, Mar. 29, 2000, subpart C to part 960 was added, effective Apr. 28, 2000.

§ 960.253 Choice of rent.

(a) *Rent options.* (1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued

residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent

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plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child

care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

§ 960.255 Self-sufficiency incentives— Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(b) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in § 5.609 of this title) of a qualified family